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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO
10/051,855	01/16/2002	Farhad Khosravi	1001.1502116	3331
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CROMPTON, SEAGER & TUFTE, LLC			JACKSON, GARY	
1221 NICOLLET AVENUE SUITE 800			ART UNIT	PAPER NUMBER
MINNEAPOLIS, MN 55403-2420			3731	J
			DATE MAILED: 12/04/2003	,

Please find below and/or attached an Office communication concerning this application or proceeding.

Application No. Application No. Applicante Application No. Introduced Examiner Sary Jackson 3731 Period for Repty A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Extension of time may be available under the provisions of 3 CFR 1.136(b). In no over, however, may a reply be liverly filled where 326 (Application For This Scommunication application 1 FM Deland for reply is available under the provisions of 3 CFR 1.136(b). In no over, however, may a reply be liverly filled where 326 (Application Provisions and Application is objected to by the Examiner. Application Provisions and Application Provisions application Provision Provisional Application Provisions application Provisional Applicat		•		4
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Claim(s) 3-4-9 is/are pending in the application.		10/051,855	KHOSRAVI, ET AL	
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Application/Control Number: 10/051,855

Art Unit: 3731

DETAILED ACTION

Double Patenting

Claims 34-49 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent No. 6,371,970.

The subject matter —an apparatus suitable for filtering emboli comprising an elongated member; a support hoop attached to the elongate member, the support hoop having an articulation region; and a blood permeable sac affixed to the support hoop so that the support hoop forming a distally-facing mouth of the blood permeable sac- is fully disclosed in the patent- that right to exclude covering - apparatus suitable for filtering emboli comprising.

An elongated member having a distal region; a support hoop attached to the distal region, the support hoop having an articulation region; and a blood permeable sac affixed to the support hoop so that the support hoop forms a distally-facing mouth of the blood permeable sac; a guide wire slidably attached to the elongated member; and a delivery sheath having a proximally-facing cavity for accepting the elongated member, support hoop and blood permeable sac, and a lumen extending through the cavity to permit the guide wire to pass therethrough.

The patent not only provides protection for the claims of the patent but also extends patent coverage to the method and apparatus of the present invention. The claims of the present application because of the phrase "comprising" not would provide patent protection for to the claimed apparatus already disclosed and covered by the claim of the issued patent. Thus, the controlling fact is that the present patent protection for the device, fully disclosed in and covered by the claim of the patent, would be extended by the allowance of the claims in this application.

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The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

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A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application that matured into a patent.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary Jackson whose telephone number is (703) 308-4302. The examiner can normally be reached on Mon.-Thurs. 7:30 am to 6:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Milano can be reached on (703) 308-2496. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

Primary Examiner
Art Unit 3731